

1 WO
2
3
4
5

6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8
9
10 Frank John Arnold, }
11 Petitioner, } No. CV-15-00828-PHX-PGR
12 vs. }
13 Charles L. Ryan, et al., }
14 Respondents. }
15

ORDER

16 Pending before the Court is the petitioner's [Second Amended Motion] to Alter
17 or Amend Judgement (Doc. 49), filed pursuant to Fed.R.Civ.P. 59(e), which the
18 Court deems to relate back to the timely filing of the petitioner's original Rule 59(e)
19 motion (Doc. 46).¹ Having considered the motion in light of the applicable record,
20 the Court finds that it should be denied.

21 A Rule 59(e) motion is an "extraordinary remedy, to be used sparingly[.]"
22 Wood v. Ryan, 759 F.3d 1117, 1121 (9th Cir.2014). The Court may consider the

23 1

24 The Ninth Circuit has ruled that the petitioner's original Rule 59(e)
25 motion (Doc. 46), filed with this Court on May 25, 2017, was timely filed. See Ninth
26 Circuit order, filed June 6, 2017, in No. 17-16106 (Doc. 45 on this Court's docket).
On June 13, 2017, the petitioner filed his first replacement Rule 59(e) motion (Doc.
47). The Court deems the petitioner's first two Rule 59(e) motions to have been
withdrawn in favor of his pending second replacement motion.

1 merits of a Rule 59(e) motion filed in a habeas action only to the extent that it asks
2 the Court to correct manifest errors of law or facts underlying its judgment of
3 dismissal. Rishor v. Ferguson, 822 F.3d 482, 492 (9th Cir.2016). The Court enjoys
4 “considerable discretion” in resolving such a motion. *Id.*

5 In its Order (Doc. 41) dismissing this § 2254 action, the Court, in agreement
6 with the recommendations of the Magistrate Judge, which the petitioner did not
7 address in his objections to the Report and Recommendation, found as follows: that
8 the petitioner’s claims in his Grounds One and Four failed because the Arizona
9 Court of Appeals’ rejection of them was neither contrary to, or an unreasonable
10 application of, clearly established Supreme Court precedent, nor did it involve an
11 unreasonable determination of the relevant facts in light of the state court record;
12 that the petitioner’s claims in his Grounds Two and Three failed because he had
13 procedurally defaulted on them inasmuch as he did not present them to the state
14 courts on direct appeal or in his PCR proceedings, and that he has not demonstrated
15 either a cause for the defaults and prejudice resulting from them or the existence of
16 a fundamental miscarriage of justice; and that the petitioner’s claim in his Ground
17 Five failed because it was not cognizable in a federal habeas proceeding, and that,
18 to the extent it was meant to establish cause and prejudice for his procedural default
19 of Ground Two, was unavailing since his ineffective assistance claim was not a
20 substantial one as required by Martinez v. Ryan, 132 S.Ct. 1309 (2012).

21 Nothing in the petitioner’s pending Rule 59(e) motion convinces the Court that
22 it clearly erred in accepting and adopting the Report and Recommendation because
23 the petitioner again fails to address the reasoning behind the Court’s dismissal

1 order.² The petitioner is in effect merely asking the Court to reconsider arguments
2 that it has already rejected and the Court declines to do so. Therefore,

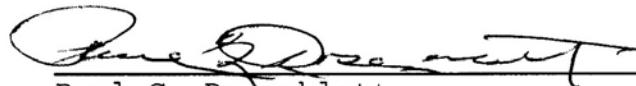
3 IT IS ORDERED that the petitioner's [Second Amended Motion] to Alter or
4 Amend Judgement (Doc. 49) is denied.

5 IT IS FURTHER ORDERED that the petitioner's [Second Amended]
6 Application for Certificate of Appealability (part of Doc. 49) is denied and that a
7 Certificate of Appealability shall not issue because the petitioner has not shown that
8 jurists of reason would find it debatable whether his Rule 59(e) motion states a valid
9 claim of the denial of a constitutional right or that jurists of reason would find it
10 debatable whether the Court is correct in its procedural ruling.

11 IT IS FURTHER ORDERED that the petitioner's [Second Amended Motion for]
12 Appointment of Counsel (part of Doc. 49) is denied.

13 IT IS FURTHER ORDERED that the Clerk of the Court shall provide the Ninth
14 Circuit Court of Appeals with a copy of this Order to be filed in No. 17-16106.

15 DATED this 5th day of October, 2017.

16
17 
18 Paul G. Rosenblatt
United States District Judge
19
20
21
22
23

24 _____
25 2
26

To the extent that the petitioner is attempting to raise new claims in his
Rule 59(e) motion, the Court has no authority to consider them unless and until the
Ninth Circuit grants the petitioner permission to file a second or successive habeas
petition containing those claims. Rishnor v. Ferguson, 822 F.3d at 492-493.